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# CONVENTION WITH MEXICO FOR THE RECOVERY AND RETURN OF STOLEN OR EMBEZZLED VEHICLES AND AIRCRAFT

JULY 1 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

## REPORT

[To accompany Treaty Doc. No. 97-18]

The Committee on Foreign Relations, to which was referred a Convention Between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft which was signed at Washington on January 15, 1981, having considered the same, reports favorably thereon without amendment and recommends that the Senate gives its advice and consent to ratification thereof.

### PURPOSE

The proposed Convention, Treaty Document 97-18, supersedes a 1936 Convention with Mexico that established the principle of mutual assistance between the two signatory countries in the recovery and return of vehicles and aircraft stolen or embezzled in one country and seized in the other's territory. By mutual agreement, the Convention was renegotiated to provide for more efficient procedures in effecting such returns or determining that a vehicle or aircraft is not within the terms of the proposed Convention.

### BACKGROUND AND MAJOR PROVISIONS

It is now estimated that as many as 20,000 vehicles valued at $100 million to $200 million are stolen in the United States and taken into Mexico annually. The procedures for return under the 1936 Convention are time consuming and subject to a complicated bureaucratic process whereby all requests for return are made to the Mexican Ministry of Foreign Relations and not the Mexican law enforcement agency that has control of the vehicle or aircraft. Therefore, from the U.S. perspective, a primary reason for renegotiating the 1936

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Convention was to improve the prospects for the speedy return of motor vehicles and aircraft stolen or embezzled in the United States and brought into Mexico since that Convention has not always proven effective in facilitating their easy and prompt return.

The Mexican government was interested in renegotiating the 1936 Convention primarily because of its concern over the smuggling into Mexico from the United States of $1 billion worth of contraband, appliances, electronic equipment and firearms annually. The Mexican government asserted that the majority of this contraband was being brought into Mexico by private aircraft, many of which were allegedly stolen or embezzled in the United States, and then landed with contraband at clandestine airstrips in remote areas of northern Mexico. Such smuggling was not a problem when the 1936 Convention was negotiated and that Convention generally obligated the parties to return aircraft stolen or embezzled in one country and found in the other's territory whether or not the vehicle or aircraft had been used in the commission of a crime. The Mexican government felt, however, that smuggling could only be deterred if it had the authority to seize and not return aircraft and vehicles used in smuggling operations. The Mexicans thus sought to ensure the inclusion of this authority in the proposed Convention.

Article 1 sets forth the basic terms of agreement to facilitate the return of stolen or embezzled vehicles or aircraft in accordance with the provisions of the Convention. It also provides for several specific circumstances under which the requested State may refuse to return a vehicle or aircraft. Article I(3) specifies that the requested State may refuse to return a stolen or embezzled vehicle if a request for return is not made within 45 days of notification of its seizure in the territory of the requested State. (The requested State is obligated to notify the other State within one month of a seizure in its territory, Article II(1)). In the case of aircraft, the request for return must be made within sixty days of notification. Consistent with Article I(3), the requested State is obligated from the time of notification not to forfeit or auction vehicles or aircraft registered or documented under the laws of the requested State while requests for return are being prepared in accordance with the Convention. The procedures are considered by its negotiators to be a major improvement over the 1936 Convention which does not provide for either notification of seizure or safeguarding of the vehicles or aircraft while a request for return is being prepared.

Article I(4) is considered especially important from a law enforcement perspective. It provides that the requested State may refuse to return an embezzled vehicle or aircraft that is subject to forfeiture because it was used in the commission of a felony in its territory with the knowledge of the owner.

Forfeiture in Mexico is a judicial procedure carried out pursuant to Article 40 of the Mexican Penal Code. Thus, for Article I(4) to be applicable, a judicial proceeding would have to be conducted establishing that the vehicle or aircraft had been used in the commission of the felony with the knowledge of its owner. This exception to return applies only to embezzled vehicles which are defined in the Convention as those which have been unlawfully converted by the person who had

rented it from an enterprise legally authorized for this purpose. Typically, this would include car rental companies and "fixed base operators"—businesses that are licensed to rent aircraft. The intent of Article I(4) is to ensure that the new Convention does not serve as a mechanism for restoring to felons the means of continuing their illegal activity but does permit the return of aircraft and vehicles to owners who had no connection with the commission of a crime. The forfeiture exception does not include stolen vehicles or aircraft since both U.S. and Mexican law on forfeiture protect the property interests of innocent owners whose aircraft or vehicles were obtained without their consent or the consent of a person legally authorized to use such vehicles or aircraft.

Article II embodies a principal purpose of the new Convention of requiring notification to each Party of the seizure of aircraft of vehicles and the identity of the seizing authority. Article II(1) sets forth the Convention's notice proceedings and provides that whenever an authority of one of the Parties seizes a vehicle or aircraft registered or documented under the laws of the other Party, the Party having seized the vehicle or aircraft must provide timely notice to the other Party so it can determine if the vehicle or aircraft was stolen or embezzled within the meaning of the Convention. Article II(4) provides that while the other Party is determining whether a vehicle or aircraft is within the meaning of the Convention and a request for return is being prepared, the seizing authority is obligated to keep the vehicle or aircraft in storage and is banned from operating it further unless it is determined to be subject to one of the exceptions to return provided for in the Convention.

Article III sets forth the documentation that must accompany a request for return and the procedures that are to be followed in submitting such requests. Requests for return are to be submitted by a consular officer of the requesting State directly to the authority having custody of the vehicle or aircraft, as identified by the requested State in the notification of seizure. Accordingly, once the Mexican government has indicated which of its law enforcement agencies has custody, the U.S. government can then direct the request for return directly to that authority with a copy of its request to the Mexican Foreign Ministry. By addressing a request for return directly to the law enforcement agency which has custody, that agency is put on notice that the aircraft or vehicle may be within the terms of the new Convention. This should prevent its transfer, use, or sale until it is determined if the vehicle or aircraft is protected by the Convention.

Article IV provides that once a request for return is received, the authority having custody is responsible for determining whether the request meets the requirements of the new Convention. If a request meets the Convention requirements, the vehicle or aircraft is to be delivered to the owner within 15 days or in the case where the vehicle or aircraft is being held in relation to a criminal investigation or prosecution, the return is to be made when the vehicle or aircraft is no longer required for the investigation or prosecution.

Article VI provides that actual expenses incurred in the return of a vehicle or aircraft are to be borne by the person seeking its return and shall be paid prior to return.

DEPARTMENT OF STATE ANALYSIS

The Department of State has provided the Committee with the following analysis of the proposed Convention.

The principal features of the new Convention are as follows. Whenever an Authority of one of the Parties seizes a vehicle or aircraft which may be registered or otherwise documented under the laws of the other Party, it must notify the other Party so that the latter may determine whether the vehicle or aircraft has been stolen or embezzled within the meaning of the Convention (Article II). While the other Party is identifying those vehicles and aircraft which are covered by the Convention and the necessary requests for return are being prepared, the seizing Authority is obligated to refrain from any action (such as an administrative sale) which could affect any preexisting claim to ownership; it must also keep the vehicle or aircraft in a storage area. The seizing Authority is barred from operating the vehicle or aircraft further unless it is determined that the property is not covered by the Convention or that it falls within one of its exceptions to return.

The Convention establishes a specific format for requests for return and lists the documentation which must accompany them (Article II). The requirements are somewhat different for vehicles and aircraft. In both cases, however, requests for return are submitted by a consolar officer of the requesting State directly to the Authority having custody of the vehicle or aircraft, as identified by the requested State in the notification of seizure. Properly notarized evidence of ownership and other documents specified in the Convention are to be appended. Copies of the requests for return are to be forwarded to the foreign ministry of the requested State under cover of a diplomatic note.

Once a request for return is received, the Authority having custody of the vehicle or aircraft is responsible for determining whether the request meets the requirements of the Convention (Article IV). That determination is to be made "as soon as practicable" and, if affirmative, shall result in delivery of the vehicle or aircraft within fifteen days to the individual identified in the request as the owner or his authorized representative. The actual expenses incurred in the return of a vehicle or aircraft shall be borne by the person seeking its return and shall be paid prior to the return (Article VI).

The Convention also specifies several specific circumstances under which the requested State may refuse to return a vehicle or aircraft (Article I (3) and (4)). The most important from a law enforcement standpoint is that stated in Article I(4)—where an embezzled vehicle or aircraft is subject to forfeiture under the laws of the requested State because it was used in its territory in the commission of a felony. Under the laws of both Mexico and the United States, property used in the commission of a felony may be forfeited if its owner had knowledge of the unlawful ends to which his property was being used. This provision is intended to ensure that the treaty does not serve as a mechanism for restoring to felons the means of continuing their illegal activity.

No new legislation will be needed to implement the Convention.

## COMMITTEE ACTION

The Committee held a public hearing on June 11, 1982 to receive Administration and public testimony on the proposed Convention. Representatives of the Departments of State and Justice testified in favor of the proposed Convention as did the three public witnesses representing the interests of the law enforcement community and aircraft insurers. On June 30, by a vote of 15–0, the Committee approved the proposed Convention and ordered it reported favorably to the Senate for its advice and consent. Senators voting in the affirmative were: Senators Percy, Baker, Hayakawa, Lugar, Mathias, Kassebaum, Boschwitz, Pressler, Pell, Biden, Glenn, Sarbanes, Zorinsky, Tsongas, and Dodd.

## ENTRY INTO FORCE

The proposed Convention with Mexico for the Recovery and Return of Stolen and Embezzled Vehicles and Aircraft will come into force on the date of the exchange of instruments of ratification and shall remain in force indefinitely. The Convention may be terminated by means of a written notification from either Party to the other, in which case it will expire ninety days from the date of receipt of such notification.

## TEXT OF THE RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of A Convention Between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft which was signed at Washington on January 15, 1981.

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